

I credit the inspector's testimony on this point, and I find that the roof was inadequately supported and that this condition should have been reported in Lane's preshift report. It was a violation of § 75.303 to fail to report this condition.

However, the methane hazard found by Inspector Thompson does not establish a violation of the preshift examination requirements cited in Order No. 2144047. As noted above, the preshift examiner is required to examine seals to determine whether they are functioning properly. This would include examining them to make sure they are not leaking methane. Inspector Thompson heard a hissing sound from the cracks in the roof above the seal. This fact, when combined with the high methane reading obtained from the methane detector and bottle sample, establishes that methane was leaking at the time Inspector Thompson was there. However, methane leakage was not a constant condition, and there is no proof that there was methane leakage at the time of Lane's preshift examination.

Lane testified that he tested for methane at the No. 7 seal and found none, and he did not hear hissing in that area. There is no evidence that conditions were otherwise when he made his inspection.

The Test of a Significant
and Substantial Violation

In Secretary of Labor v. Consolidation Coal Company, 6 FMSHRC 189 (1984), the Commission held that the Secretary must prove the following elements to establish that a violation of a safety standard is significant and substantial: (1) the violation of a safety standard; (2) a discrete safety hazard, that is, a measure of danger contributed to by the violation; (3) a reasonable likelihood that the hazard contributed to will result in injury; and (4) a reasonable likelihood that the injury will be of a reasonably serious nature.